

DOUBLE TAXATION: SHIPPING PROFITS

Exchange of notes at Washington February 28 and November 14, 1922

Entered into force November 14, 1922; operative from January 1, 1921

Superseded by exchange of notes of November 26, 1924, and January 23 and March 24, 1925¹

1923 For. Rel. (II) 635

The Norwegian Minister to the Acting Secretary of State

WASHINGTON, February 28, 1922

MR. ACTING SECRETARY OF STATE: With reference to my note of February 13, last, in which was stated that foreign shipping is in fact exempt from taxation in Norway I now have the honor to inform your Excellency that, according to information received from my Government, the Norwegian taxation acts of August 18, 1911, contain the following provision: "The question whether foreign steamship-companies are to be taxed for operating a service of liners on Norwegian ports and in case to what an extent such a taxation is to be imposed, is to be decided by the King". There has, however, not been issued any regulations under this provision about taxation of foreign steamship companies operating a service of liners on Norwegian ports. As to taxation of other foreign shipping trade on Norwegian ports no provision is contained in our taxation acts. Such shipping is therefore at present not taxed in Norway at all, and the exemption of foreign shipping from taxation in Norway has thus been effective even further back than January 1, 1917.

In connection herewith my Government has also informed me that specific statutes regarding the exemption from taxation of foreign shipowners are now being framed in Norway.

Under these circumstances I beg again to express the hope that necessary measures may be taken by the United States Government in order to secure that the tax-exemption for Norwegian shipowners in this country may be

¹ EAS 15, *post*, p. 477.

valid not only from January 1, 1921, but also include the years 1917, 1918, 1919 and 1920.

I avail myself [etc.]

H. BRYN

The Secretary of State to the Norwegian Minister

WASHINGTON, November 14, 1922

SIR: With further reference to your note of October 5, 1922, in which you ask to be advised whether the Revenue Act of 1921, Section 213, Paragraph 8, exempts Norwegian shipping corporations from all taxes so long as Norway does not tax American shipping corporations operating ships which use Norwegian ports, I have the honor to inform you that, inasmuch as Norway apparently satisfies the equivalent exemption provision of Section 213 (b) (8) of the Revenue Act of 1921,² it has been ruled that the income of a non-resident alien or foreign corporation, which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of Norway, is exempt from income and excess and war profits taxes.

In answer to the inquiry made in the penultimate paragraph of your communication under reference, concerning the liability of Norwegian shipping corporations to capital stock tax, I have the honor to advise you that Section 1000 (a) (2) and Section 1000 (b) of the Revenue Act of 1921 provides that:

"Sec. 1000 (a) (2) Every foreign corporation shall pay annually a special excise tax with respect to carrying on or doing business in the United States, equivalent to \$1 for each \$1000 of the average amount of capital employed in the transaction of its business in the United States during the preceding year ending June 30."

"Sec. 1000. (b) The taxes imposed by this section shall not apply in any year to any corporation which was not engaged in business (or, in the case of a foreign corporation, not engaged in business in the United States) during the preceding year ending June 30, nor to any corporation enumerated in section 231, nor to any insurance company subject to the tax imposed by section 243 or 246."

The basis for the tax in the case of foreign corporations is the "carrying on or doing of business" in the United States. Any foreign corporation which enters the United States for the purpose of its business in any manner is liable to this special excise tax. There is no provision in the Revenue Act of 1921 for the exemption of any foreign corporation, shipping or otherwise, from capital stock tax as long as it is doing business in the United States.

² 42 Stat. 239.

It is, therefore, held that the equivalent exemption satisfied by Norway in accordance with the provisions of Section 213 (b) (8) of the Revenue Act of 1921 has no application in so far as capital stock tax is concerned.

Therefore, Norway shipping corporations "carrying on or doing business" in the United States come within the purview of Section 1000 (a) (2) of the Act and will be required to file capital stock tax returns, Form 708, and pay tax equivalent to \$1 for each full \$1,000 of the average amount of capital employed in the transaction of its business in the United States during the preceding year ended June 30.

Accept [etc.]

For the Secretary of State:

WILLIAM PHILLIPS